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United States Courts
Southern District of Texas
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MAY 13 2003

Michael N. Milby, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ENRON CORPORATION SECURITIES
LITIGATION

§ Civil Action No. H-01-3624
§ (Consolidated)

This Document Relates To:

MARK NEWBY, et al., Individually and On
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

ENRON CORP., et al.,

Defendants.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, et al., Individually and On
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

KENNETH L. LAY, et al.,

Defendants.

CLASS ACTION

**LEAD PLAINTIFF'S OPPOSITION TO DEFENDANT
STANLEY C. HORTON'S MOTION FOR RECONSIDERATION
OF HIS MOTION TO DISMISS**

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I. INTRODUCTION

In defendant Stanley C. Horton's Motion for Reconsideration of the Court's Denial of His Motion to Dismiss ("Motion for Reconsideration"), he claims the Court denied his motion to dismiss solely because of his position on the Enron Management Committee. Not so. The Court denied Horton's motion to dismiss based on the totality of the circumstances pleaded in Lead Plaintiff's Consolidated Complaint, including the \$47 million in insider trading proceeds and \$3.1 million in bonus payments he reaped – allegations Horton completely ignores in his moving papers.

Horton fails in his attempt to equate himself to defendants Rebecca Mark-Jusbasche, Joseph M. Hirko, and James V. Derrick, Jr., whose motions to dismiss the fraud claims against them were granted. Plaintiff's allegations show Horton played a greater role in the day-to-day activities of Enron than these defendants. Horton "had intimate personal involvement in Enron's daily business operations." March 25 Order at 5. In contrast, the Court found that plaintiffs' allegations regarding Mark-Jusbasche, Hirko, and Derrick were not sufficient to show they were involved in Enron's daily operations during the Class Period. Horton's Motion for Reconsideration should be denied.

II. THE COURT DENIED HORTON'S MOTION TO DISMISS BASED ON THE TOTALITY OF CIRCUMSTANCES

Despite the Court declaring "that a person's position in the corporation's hierarchy or membership on a committee ... by itself, is insufficient to meet pleading requirements," April 22 Order at 6, Horton claims he "remains a defendant in this case solely because of his seat on the Management Committee." Motion for Reconsideration at 1. The March 25 Order makes clear it was the totality of the circumstances, rather than any single averment, that led the Court to deny Horton's motion to dismiss: "Viewing the circumstances of the full scale, expansive, long-term scam detailed in the complaint as a whole, the Court finds that the motions to dismiss should be denied." March 25 Order at 6.

"Not only does the complaint assert that" Horton was an insider "involved in the day to day operations of Enron and that all significant business decisions were presented to the Management Committee for the members' approval, and thus essential to effectuating the deceptive scheme, but

it is very significant that [Horton] sat on the key Management Committee for *years*." April 22 Order at 6. "That fact is important," explains the Court, because

the outstanding feature of the alleged Ponzi scheme was regular, and soon all too predictable, reinforcing patterns of methods effecting the purported deceit and fraud; the very regularity of the scheme, which merely duplicated or imitated again and again the models initially developed in the establishment and funding of Chewo-JEDI-LJM1 and 2, the cumulative structured financing, the recurrent and increasing abuse of mark to market accounting described in such detail in the complaint, the reiterated use of snowballing, the repeated waivers of conflicts of interest regarding Fastow in contravention of Enron's Code of Conduct without any effort of the Committee to check up on the unvarying promised safeguards, the repetitive sham hedging, and the replay of loans disguised as sales. Also critical was the timing of such recurrent contrivances, repeatedly around vital deadlines for SEC reports.

Id. at 6-7.

During the Class Period, Horton also reaped \$50 million in company bonuses and from dumping Enron stock at inflated prices. ¶83(g). Although the Court found this sum to be a "significant factor[] in giving rise to a strong inference of scienter," March 25 Order at 10, Horton's Motion for Reconsideration utterly ignores this profiteering. Based on the substantial allegations against him, the "Court cannot help but find that a strong inference exists of actual knowledge or reckless disregard on the part of [Horton] arising from Lead Plaintiff's complaint." April 22 Order at 8.

III. THE MARCH 25 ORDER IS CONSISTENT WITH THE COURT'S OTHER DECISIONS

A. The March 25 Order Is Consistent with the Court's Ruling Regarding Defendant Mark-Jusbasche

Horton claims the Court's March 25 Order conflicts with the partial dismissal of Rebecca Mark-Jusbasche. Motion for Reconsideration at 6-7. But he ignores important distinctions identified by the Court. Unlike Mark-Jusbasche, Horton "had intimate personal involvement in Enron's daily business operations, combined with long-term membership on the Enron Management, or Executive, Committee." March 25 Order at 5. He and "the other Insider Defendants were in charge of actually running the day-to-day business of Enron Corporation or the sham SPEs and partnerships at the core of the alleged fraud over the critical years prior to and during the Class Period." March 25 Order at 6. Mark-Jusbasche, on the other hand, "left Enron International *before*

the Class Period commenced to become CEO of Azurix." Mark-Jusbasche Order at 4 (emphasis added).

Horton analogizes himself to Mark-Jusbasche because his duties purportedly "'centered on operations of a subsidiary'" of Enron. Motion for Reconsideration at 5. In sharp contrast to Mark-Jusbasche, who worked at an Enron "*affiliate*" during the Class Period," Horton's duties always centered on Enron itself. Mark-Jusbasche Order at 14 (emphasis added); Complaint ¶¶83(g), 88. As the Court noted, Lead Plaintiff's "complaint reflects the prevalent awareness among the Enron workforce of wrongdoing in its numerous quotations of statements by non-defendant employees involved [in] various Enron departments and ventures for whom the sham was not only a normal topic of conversation, but at times a matter for satiric jokes." March 25 Order at 7. Indeed, the Enron "fraud was so pervasive, so extensive in scope, so frequent, and involved such huge dollar sums," observed the Court, "that those working within the company for years [such as Horton] had to be aware of the enormous gap between the brilliant but sham public facade fabricated by Enron and contrary reality of the corporations finances and business failures." *Id.* at 6-7. Horton and Mark-Jusbasche were not alike.¹

B. The March 25 Order Is Consistent with the Court's Ruling Regarding Defendants Hirko and Derrick

Horton also suggests that the dismissals of defendants Joseph M. Hirko and James V. Derrick, Jr. add weight to his request for reconsideration. Motion for Reconsideration at 2-5. The Court dismissed Hirko because he pleaded "circumstances surrounding Hirko's involvement in Enron suggest that he was distanced from the daily operations of the company and the alleged Ponzi scheme." April 24 Order at 17. Hirko "only became an Enron employee with the acquisition" of Portland General Electric in 1997, and he "remained in Oregon and never lived in Houston, where management of the day-to-day operations of Enron took place." *Id.* Horton, by contrast, actually

¹Horton suggests that Mark-Jusbasche is more culpable than he for the Enron fraud because she signed the registration statement for the 7% exchangeable notes and Enron's 1999 10-K. Motion for Reconsideration at 7. The Court dismissed the fraud claims against Mark-Jusbasche because, unlike Horton, the Court found "Lead Plaintiff has failed to allege facts giving rise to a strong inference of scienter." Mark-Jusbasche Order at 14. Notably, the Court did uphold the §11 claims against Mark-Jusbasche for untrue statements in the registration statement. *Id.* at 15.

worked at Enron headquarters at 1400 Smith Street, Houston, Texas, as his Forms 4 reveal. *See* Defendant Stanley C. Horton's Motion to Dismiss, Exs. A-B. Unlike Horton who received \$3.1 million in bonuses, Lead Plaintiff's "complaint makes no allegations that Hirko received any bonuses." April 24 Order at 18; Complaint ¶83(g), (k). And in contrast to Hirko's sale of Enron stock, which "occurred in the spring of 2000, just prior to his separation from EBS and Enron," Horton's sales were not made on the eve of any departure from Enron.² April 24 Order at 18; March 25 Order at 3 n.1.

Similarly, the Court dismissed Derrick because, "unlike with most of the other insiders," Lead Plaintiff failed to "make any specific allegations showing that he was involved in any way in the day-to-day business operations of Enron or with the individuals alleged to have been at the heart of the Ponzi scheme and violating §10(b)." April 24 Order at 33-34; *see also id.* at 36. Horton, by contrast, "had intimate personal involvement in Enron's daily business operations, combined with long-term membership on the Enron Management, or Executive, Committee" and was one of the "Insider Defendants in charge of actually running the day-to-day business of Enron Corporation or the sham SPEs and partnerships at the core of the alleged fraud over the critical years prior to and during the Class Period." March 25 Order at 5-6. Horton's attempt to compare himself to Hirko and Derrick fails.

²Horton appears to suggest that his continued employment with Enron undermines the fraud allegations against him. Motion for Reconsideration at 3 n.3. The Court has already considered this contention and rejected it as applied to Horton as well as defendant Lawrence Greg Whalley. *See* March 25 Order at 3 nn.1-2.

IV. CONCLUSION

For the reasons above, as well as in the Court's April 22 Order, defendant Stanley C. Horton's Motion for Reconsideration of His Motion to Dismiss should be denied.

DATED: May 13, 2003

Respectfully submitted,

MILBERG WEISS BERSHAD
HYNES & LERACH LLP
WILLIAM S. LERACH
DARREN J. ROBBINS
HELEN J. HODGES
BYRON S. GEORGIOU
G. PAUL HOWES
JAMES I. JACONETTE
MICHELLE M. CICCARELLI
JAMES R. HAIL
JOHN A. LOWTHER
ALEXANDRA S. BERNAY
MATTHEW P. SIBEN
ROBERT R. HENSSLER, JR.

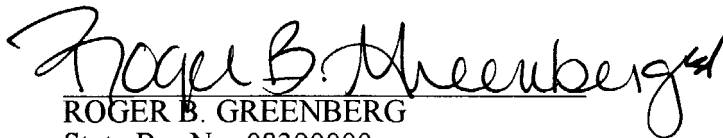
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HELEN J. HODGES

401 B Street, Suite 1700
San Diego, CA 92101
Telephone: 619/231-1058

MILBERG WEISS BERSHAD
HYNES & LERACH LLP
STEVEN G. SCHULMAN
One Pennsylvania Plaza
New York, NY 10119-1065
Telephone: 212/594-5300

Lead Counsel for Plaintiffs

SCHWARTZ, JUNELL, CAMPBELL
& OATHOUT, LLP


ROGER B. GREENBERG
State Bar No. 08390000
Federal I.D. No. 3932
Two Houston Center
909 Fannin, Suite 2000
Houston, TX 77010
Telephone: 713/752-0017

HOEFFNER & BILEK, LLP
THOMAS E. BILEK
Federal Bar No. 9338
State Bar No. 02313525
440 Louisiana, Suite 720
Houston, TX 77002
Telephone: 713/227-7720

Attorneys in Charge

BERGER & MONTAGUE, P.C.
SHERRIE R. SAVETT
1622 Locust Street
Philadelphia, PA 19103
Telephone: 215/875-3000

Attorneys for Staro Asset Management

WOLF POPPER LLP
ROBERT C. FINKEL
845 Third Avenue
New York, NY 10022
Telephone: 212/759-4600

SHAPIRO HABER & URMY LLP
THOMAS G. SHAPIRO
75 State Street
Boston, MA 02109
Telephone: 617/439-3939

Attorneys for Nathaniel Pulsifer

SCOTT & SCOTT, LLC
DAVID R. SCOTT
NEIL ROTHSTEIN
S. EDWARD SARSKAS
108 Norwich Avenue
Colchester, CT 06415
Telephone: 860/537-3818

**Attorneys for the Archdiocese of Milwaukee
Supporting Fund, Inc.**

THE CUNEO LAW GROUP, P.C.
JONATHAN W. CUNEO
MICHAEL G. LENETT
317 Massachusetts Avenue, N.E., Suite 300
Washington, D.C. 20002
Telephone: 202/789-3960

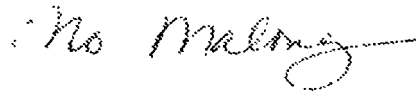
Washington Counsel

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing LEAD PLAINTIFF'S OPPOSITION TO DEFENDANT STANLEY C. HORTON'S MOTION FOR RECONSIDERATION OF HIS MOTION TO DISMISS has been served by sending a copy via electronic mail to serve@ESL3624.com on this 13th day of May, 2003.

I further certify that a copy of the foregoing LEAD PLAINTIFF'S OPPOSITION TO DEFENDANT STANLEY C. HORTON'S MOTION FOR RECONSIDERATION OF HIS MOTION TO DISMISS has been served via overnight mail on the following parties, who do not accept service by electronic mail on this 13th day of May, 2003.

Carolyn S. Schwartz
United States Trustee, Region 2
33 Whitehall Street, 21st Floor
New York, NY 10004



Mo Maloney